U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: MAY 0 8 2015 OFFICE: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. We will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding the defined equivalent of an advanced degree. When he filed the petition, the petitioner was the chief executive officer (CEO) of He is also the founder and CEO of The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding the equivalent of an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

The petitioner submits additional evidence on appeal.

I. Law

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds the equivalent of a U.S. baccalaureate degree in computer science from the followed by more than five years of progressive post-baccalaureate experience. This evidence suffices to establish the equivalent of a master's degree under 8 C.F.R. § 204.5(k)(2).

The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

In re New York State Dep't of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that the beneficiary seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must establish that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the beneficiary will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the beneficiary's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's assurance that the beneficiary will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The term "prospective" is included here to require future contributions by the beneficiary, rather than to facilitate the entry of a beneficiary with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

II. Facts and Analysis

The petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on July 13, 2010. Part 6, line 3 of the form included the following description of the petitioner's intended job: "Direct daily operations of software development, analyze workflow, establish priorities. Develop computer information resources, strategic computing, and disaster recovery. Knowle[d]ge in ERP packages using SAP, EDI, Workflow, Business Connector, using ASP and .NET."

An introductory statement submitted with the petition indicated that the petitioner's work serves the national interest because he "has immensely contributed to the progress of ecommerce through his design and development of business solutions which enables [*sic*] organizations to optimize the settlement process through electronic transactions." The statement also indicated that the petitioner "has performed several large projects with Fortune 500 companies including , etc.," and "has been a recipient of (*sic*). The petitioner did not submit supporting evidence from the identified clients or from

On his résumé, the petitioner indicated that he has worked at , serving client company , since 2009. The petitioner also indicated that he served three clients (while employed at

from 2006 to 2009. The petitioner submitted two letters with the petition. identified as chief technology officer at stated:

> [The petitioner] is an outstanding Technology Architect and senior database specialist. He has been an outstanding contributor to our technology research team and a well experienced and knowledgeable resource. . . .
>
> [The petitioner's] contribution to our R&D [research and development] of global payment network solution is undisputable. He helped us design and re-engineer [a] major portion of our existing solution into a new generation of business-to-business eCommerce engine. This solution has helped us to strategically position our company for doing business globally and will improve our competitive positioning.

identified as director of at stated that he supervised the petitioner on several projects and that "[s]ome of his work has been a major factor in our division's product success for launching products. . . ."

The director issued a request for evidence (RFE) on April 15, 2014. The director stated that the letters submitted with the petition "failed to demonstrate that the [petitioner] has a past record of specific prior achievement with some degree of influence on his field as a whole." The director also noted that U.S. Citizenship and Immigration Services (USCIS) inquiries revealed that ' is the brother of the petitioner," and that "the petitioner is the 100% owner of and '

In a statement responding to the RFE, the petitioner indicated that, in addition to working at the petitioner volunteers for The petitioner asserted that he "has been a driving force behind the recent boom in electronic payment systems in the United States," and that he has authored several articles relating to ecommerce, including "a white paper addressing the use of Data Analytics technology that can transform the U.S. banking sector."

The petitioner submitted copies of four papers that he has written. The petitioner did not submit information or evidence regarding the distribution of three of the papers, identified as "white papers," including the 2009 paper described above. The fourth paper, ' appeared in While the petitioner has indicated the potential of his papers to affect the U.S. banking sector, the record does not include evidence to establish that the papers have in fact influenced the field.

The petitioner also submitted two unsigned letters in response to the RFE. One letter is attributed to , managing partner of the who has collaborated with the petitioner in the past. It states that the petitioner has recently begun offering technology based products to medical service providers, "resulting in reducing bad debt and improving collections rates from patients and payers." The letter also states that the petitioner's new products and services have "created several new jobs within his organization and externally within the organization's client base." The record does not include documentary evidence to support these assertions regarding the effects of the petitioner's

products and services. Statements made without supporting documentation are of limited probative value and are not sufficient to meet the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The second letter, attributed to managing director of indicates that the has invited the petitioner to speak at two of the organization's annual conferences, and states:

> During the course of my work in global payments I have seen less than a handful of technology companies achieve the technology achievement and the capability that has achieved (a company [the petitioner] co-funded). This can only be attributed to the abilities, vision and leadership [the petitioner] has contributed to the industry and has created several job opportunities and competitive advantage for their clients across [the] United States who adopted solutions.

The annual conferences mentioned in the letter took place in 2013 and 2014. A web printout shows that the petitioner was also scheduled to speak at the in June 2014. These conferences took place several years after the petition's 2010 filing date, and therefore cannot establish the petitioner's eligibility as of that date. An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request. 8 C.F.R. § 103.2(b)(1). USCIS cannot properly approve the petition at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

The director denied the petition on August 11, 2014, stating that the submitted evidence "failed to demonstrate how [the petitioner's] contributions in his field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver." The director acknowledged the assertion that the petitioner has made important innovations in his field, but found this assertion "was vague and never established how his innovation had some influence in the field as a whole."

On appeal, the petitioner states that he "has made unusually significant contributions to the field of Information Technology and its application to electronic payment systems." He indicates that he is "the innovator and chief architect of a new payment system that is being launched from the United States in 2015, allowing the payment and clearing of funds in real-time mode world-wide." The petitioner submits a press release, dated July 1, 2014, which announces "the launch of , the industry's first global real-time payments network for domestic and international transaction processing for commercial trade." In addition, the petitioner submits a letter from , executive chairman of who asserts that the petitioner "is a well-respected industry contributor and subject matter expert in the banking technology and payment space in the United States," and that "[w]ithout [the petitioner's] continued contribution to initiative, it would not be possible for us to achieve success and the project will be at risk."

The petitioner asserts that the project received the "innovation award" for 2014 from . However, the record does not include any evidence regarding this award or establishing that the project has influenced the field of electronic payment processing since its creation. Further, as the did not exist when the petitioner filed the petition in 2010, its subsequent development cannot retroactively establish eligibility as of the filing date, as required by 8 C.F.R. § 103.2(b)(1).

The record does not include documentary evidence to support the assertions by the petitioner and others, detailed above, regarding the petitioner's contributions to the progress of ecommerce. *See Matter of Soffici*, 22 I&N Dec. at 165.

III. Conclusion

The petitioner has not established a past record of achievement at a level that would justify a waiver of the job offer requirement. The petitioner need not demonstrate notoriety on the scale of national acclaim, but the national interest waiver contemplates that his influence be national in scope. *NYSDOT*, 22 I&N Dec. at 217, n.3. More specifically, the petitioner "must clearly present a significant benefit to the field of endeavor." *Id.* at 218. *See also id.* at 219, n.6 (the individual must have "a past history of demonstrable achievement with some degree of influence on the field as a whole").

As is clear from the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

IV. Credibility

As an additional matter, there are discrepancies and omissions in the record that call into question the petitioner's credibility. Because we review the record on a *de novo* basis, we may identify additional issues of concern beyond what the Service Center identified in the initial decision. *See Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The credibility of the petitioner's assertions is material to the proceeding. Section 204(b) of the Act, 8 U.S.C. § 1154(b), provides for the approval of immigrant petitions only upon a determination that "the facts stated in the petition are true." *See* section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

The record includes a number of assertions by the petitioner that are unsubstantiated, or that show significant omissions. On Form I-140, the petitioner stated his occupation as "Database Administrator" (Part 5, line 3), and that he seeks employment as an "MIS [management information systems] manager" (Part 6, line 1). On his accompanying résumé, the petitioner listed "functional roles" such as "Project

Manager/Technical Lead/Architect" and "Database Designer," and stated that, since June 2009, he had served as a "Sr. Technical Architect/Lead" at with identified as a "client." The petitioner did not acknowledge his leadership roles at until the director, in the RFE, disclosed that USCIS was aware of those facts. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

On his résumé, under "Education," the petitioner stated: "MBA. (Part-time) at PA (2009)." A transcript from the university does not show that he received the degree or that he passed all required courses. The petitioner submitted a photocopied certificate that stated he "successfully complet[ed] all requirements of the Class of 2009 MBA Program," but the certificate bears no seal, watermark, or other indication that is the source of the document.

The petitioner's repeated submission of incomplete or misleading information raises doubts under *Matter of Ho* which reflect on other elements of the record, for example the petitioner's submission of unsigned letters and unsubstantiated references to awards. These issues diminish the weight of assertions made in support of the petition.

We will dismiss the appeal for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.